



Indiana Court Times

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Chief Justice Delivers State of Judiciary Speech

Indiana Chief Justice, Randall T. Shepard delivered his State of the Judiciary Speech before the Indiana General Assembly on January 13, 2000. The following is a digest of the content. The full speech is posted on our website at www.state.in.us/judiciary.

"What Has Indiana Done About This?"

In two vastly different settings last month, people reminded me of a statement I made on the day I was sworn in as Chief Justice: "I want us to be a court so well regarded that judges in other states, when considering the toughest le-

gal issues of our time, will be led to turn to each other and ask, 'I wonder what Indiana has done about this?'"

It is the sort of heady statement one makes when taking office, a reminder of the lofty objectives that come with such a

day. Having it quoted back to me twice just in December, though, prompted me to think about the big objectives of the Indiana judiciary and about whether we are doing anything that is truly special or inventive. I think there are five major stories to tell about today's Indiana courts.

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Court of Appeals Judge Fills Supreme Court Vacancy

Court of Appeals Judge Robert D. Rucker was appointed by Governor O'Bannon to serve as Indiana's 105th Supreme Court Justice.

Justice Rucker served on the Court of Appeals from January 1991 until his elevation to the Supreme Court in November 1999. He filled the vacancy created by the resignation of Justice Myra C. Selby, who left the court to return to the private practice of law.

"Justice Rucker has proven his ability as an appellate court judge. He is widely respected as a careful, thoughtful, thorough and independent judge," O'Bannon said. "He brings to the court a

wealth of experience as an appellate court judge, a deputy prosecutor, a city attorney and a general practitioner."

"I am confident that he will be a dynamic member of the Supreme Court and that his presence will make a positive difference, as it has to the Court of Appeals."

O'Bannon praised the other finalists, Porter Superior Court Judge Nancy Vaidik and Indianapolis attorney Mary Beth Ramey as "outstanding candidates



The Honorable Robert D. Rucker, Jr.

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State of Judiciary continued from page 1

I. A Lot of People Need Legal Help and Cannot Afford It

People all too often find themselves in need of a lawyer. Indiana is helping such people obtain legal assistance.

In the field of criminal law, our state has a long and interesting history of pursuing two seemingly paradoxical objectives. On the one hand, we are a state that takes a no-nonsense approach to crime.

At the same time, we are a state that has for 150 years stood strong for the proposition that if you are charged with a crime you should not have to fend for yourself just because you are poor. Indiana's most recent innovation is the Indiana Public Defender Commission. Created in 1993, it is drawing national attention. When the American Bar Association recently urged that all states adopt minimum standards for indigent defense, it held up Indiana as a model for others to follow.

Of course, most people with legal problems are law-abiding folks entangled in divorces, employment problems, or housing disputes. Historically, the people received help from the federally-financed Legal Services offices, but since Congress cut funds in 1995, Indiana has been looking for a way to provide more legal assistance to these people. Within the last 90 days, thousands of Indiana lawyers have transferred the small amounts they hold in trust out of traditional zero-interest accounts and placed them instead in accounts that are now earning interest for legal services to the poor. This energetic beginning is the product of a partnership between the Supreme Court and the Indiana Bar Foundation.

Indiana will use the proceeds to recruit and organize lawyers, led by judges, who are willing to donate time assisting low-

income people. There is every reason to predict success, thanks to the leadership of Judge Mark Bailey of the Court of Appeals and David Remondini, Counsel to the Chief Justice.

No one in America has tried this approach. It shows Indiana is a great place to live where decent people help each other out.

II. The Courts Need to Support Strong Families

It's a happy fact that the statistics about marriage and children and divorce are improving, but our state still has 40,000 divorces a year and thousands of children born out of wedlock. Let me mention some important projects that should make Indiana a leader in this field.

The Supreme Court and the Domestic Relations Committee of the Judicial Conference have launched a project to devise statewide guidelines for child visitation.

Our committee, chaired by Judge Dan Donahue of Clarksville, has decided to examine how visitation works best from the child's point of view, an idea from Lake County. They have given a name to this: child-centered visitation. We know of no other state court system that will look at the issue in quite this way.

On a related front, we have set in motion a comprehensive re-examination of protective orders, an important aspect of combating domestic violence. This new initiative, led by Blackford County Court Judge John Forcum, will examine the effectiveness of protective orders.

But the larger issue is how we organize the court system to work better for families. A Family Court Task Force, headed by Judge Margret A. Robb of the Court of Appeals, is about to help us choose three family court pilot projects from eight counties that submitted innovative applications.

III. This Needs to be a Judiciary for All the People

Opportunity for minorities and women in the courts is a high priority for the Indiana judicial system, and it is a field where Indiana is a genuine leader.

We are committed to the election and the appointment of minority and women lawyers to positions of responsibility and power. The number of women serving as judges has grown so large that even regular observers cannot easily keep track of how many there are. There are now scores of women serving as judges and magistrates (mostly as judges), two of the three officers of

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the Indiana Judges' Association are women along with a third of the board members, and five women judges chair committees of the Judicial Conference of Indiana. Three Supreme Court boards are chaired by women.

There are more black judges than ever before, with eighteen minority judges and magistrates (mostly judges). Two of these judges chair committees of the Judicial Conference, joining the four African-Americans who serve as officers of Supreme Court Commissions.

There has been dramatic progress in the courts of Lake County. You may recall that during my address in 1989, I said "we need a black trial judge in Lake County." I am especially happy to tell you that today, with the last appointment made by Governor O'Bannon, the bench in Lake County approximates the demographics of that county's population and far exceeds the percentage of minority lawyers.

Of course, we need more minority lawyers, and our state has become known for the Indiana Conference for Legal Education Opportunity, ICLEO. This year, there are ICLEO students in all three classes of Indiana's law schools, and the first CLEO student has already graduated. Two of these students are about to become law clerks in the state's highest court. This commitment by Indiana has attracted notice all around the country, including Georgia, where the first Georgia CLEO program began just last

summer, in open emulation of the Indiana ideal.

IV. The Court System Has to Remake Itself

The court structure in our state is largely the product of a hundred years of ad hoc decisions. When it comes to making the most out of time and taxpayer money, this system leaves a lot to be desired, but we are doing our best to make it work effectively. For example:

- ◆ We have asked judges, county by county, and by groups of counties, to examine disparities in workload and prepare plans to even out the disparities.
- ◆ The Citizens Commission on the Future of Indiana Courts and the Judicial Administration Committee recently completed major studies of how we recruit, treat, and empower juries.
- ◆ With the help of some of our state's most able lawyers, the Supreme Court has issued a sweeping revision of the rules for taking appeals, for the first time in thirty years.
- ◆ We broadcast a session of the Supreme Court over the Internet, only the second supreme court in the United States ever to do so.
- ◆ We created a task force, chaired by Justice Frank Sullivan, to implement a comprehensive technology strategy so that the scores of local court information systems can be connected together.

V. Indiana Needs to be a Place of Good Thinking

Finally, we aspire as a judiciary to hold our own against the growing weight of our caseload, to concentrate on the plight of individuals and to come to grips with the most difficult legal issues of our time. There were hopeful signs suggesting we already do that. For example, a recent decision authored by Judge Jim Kirsch tackled one of our society's most difficult problems—care for people afflicted with Alzheimer's. His opinion on the relationship between patient and caregiver, and Judge Ezra Friedlander's dissent, so thoughtfully analyzed the problem that *The Wall Street Journal* reported it on page one. Supreme Court Justice Theodore Boehm's opinion about the way insurance companies provide lawyers for people who have been in accidents put Indiana on page one of *The National Law Journal*.

Struggle as we do with the press of volume, Indiana judges will not lose sight of the need for clear thinking and good writing, so that people in other parts of the nation will be led to ask, "I wonder what Indiana has done about this?"

Conclusion

Why does that matter? Standing alone, the fact that others look to us matters not a whit. It makes a difference only as a sign that we are not simply engaged in running the same old machinery. It is some sign that Indiana judges are contributing towards making our state an even better place to live and prosper, and raise children, and, yes, making a more just society.

The Hon. Robert D. Rucker, continued from page 1

who also would have served the Supreme Court with great distinction."

Justice Rucker, 52, earned his undergraduate degree from Indiana University and his law degree from Valparaiso University School of Law. In 1998, he earned a Master of Laws degree from the University of Virginia School of Law. His thesis was recently published in the Valparaiso University Law Review.

Justice Rucker is a former vice-chairman of the Indiana

Commission for Continuing Legal Education. He served for six years on the board of directors of Legal Services of Northwest Indiana.

On November 19, 1999, the Justices of the Indiana Supreme Court and the Judges of the Indiana Court of Appeals held a ceremony to mark the retirement of Justice Rucker from the Court of Appeals and his swearing in as Indiana's 105th Justice.

The public ceremony was held in the Supreme Court Courtroom. To accommodate the large crowd

attending the swearing-in ceremony, closed-circuit TV's were set up in the lobby of the Statehouse to air the proceedings.

The appointment of Justice Rucker to the Supreme Court created a vacancy in the third district of the Court of Appeals.

Governor O'Bannon appointed Porter Superior Court Nancy Vaidik to that seat. She was sworn in on February 18, 2000. Her appointment will be featured in the next issue of the *Indiana Court Times*.

Public Defender Commission

thirty-seven Indiana counties now participating in non-capital reimbursement plans

Participation in non-capital reimbursement available through the Public Defense Fund continues to grow.

At its meeting on September 1, 1999, the Indiana Public Defender Commission approved the comprehensive plans of seven new counties. On December 17, an additional nine counties obtained eligibility, and on February 2, 2000, one new county was added. Obtaining eligibility for reimbursement were: Crawford, Decatur, Fountain, Greene, Hancock, Knox, Lake, Martin, Newton, Ohio, Pulaski, Spencer, Sullivan, Switzerland, Union, Vigo, and Whitley counties. This raises to 37 the number of counties eligible for reimbursement of non-capital indigent defense services from the Fund. These thirty-seven counties represent

more than 40% of the state's population.

Since September 1, twenty-four meetings have been held with officials of different counties interested in becoming eligible to receive reimbursement from the Fund. The next opportunity to qualify for eligibility is the Commission's meeting on May 24, 2000. It is anticipated that at least four more counties will submit comprehensive plans for approval at this meeting.

Since the start of the fiscal year on July 1, 1999, the Commission has approved non-capital reimbursements submitted by 23 counties totaling more than \$2.3

million. An additional \$247,477 has been approved for six counties in capital cases. The Commission also amended its standard dealing with the qualifications of counsel to handle juvenile proceedings. The Commission's new standard is broader than the previous standard and permits juvenile court experience, as well as adult court experience, to be considered in determining counsel's qualifications.

Any county wishing to schedule a meeting to discuss the benefits of participating in the Public Defense Fund should contact the Division of State Court Administration, Tom Carusillo, Attorney for the Commission, at 317-232-2542 or tcarusil@courts.state.in.us.

Judicial Technology And Automation Committee (JTAC)

JTAC moves on technology issues

The Indiana Supreme Court recently created a new committee to address technology issues within the judiciary.

The Supreme Court appointed Justice Frank Sullivan as chair and charged the Judicial Technology and Automation Committee (JTAC) with five specific areas of concern: further implementation of AIMS, use of the internet, electronic case filing, statewide connectivity of courts, and technology assistance for trial courts. The members of the committee are Hon. Frank Sullivan (Chair), Hon. Paul Mathias (Vice Chair), Hon.

Edward Najam, Hon. Sherry Biddinger-Gregg, Hon. Dean Colvin, Hon. Loretta Rush, Hon. Cynthia Ayers, Hon. Steve Eichholtz, Hon. Jeffery Dywan and Lilia Judson.

One of the committee's first major tasks is to determine how best to use a \$300,000 grant obtained from the Criminal Justice Institute for the purpose of trial court automation. A survey conducted by the Division of State

Court Administration last year showed that as many as 20 Indiana counties have little or no computerization in their courts. The goal of this grant is to provide some assistance to those counties.

More information about JTAC, the Technology Assistance Grant, and other judicial committees and court initiatives may be found at <http://www.courts.state.in.us> or by calling Ron Miller at (317) 232-2542.

Family Court Pilot Project

In September 1999, during his opening remarks for the Joint Summit of the Legal Community, Chief Justice Shepard announced that the Division of State Court Administration was embarking on a new Family Court Project and that three Indiana counties would be selected to test the concept of family court in Indiana on a pilot basis.

Justice Shepard also announced that a six-judge task force had been appointed to study and make recommendations regarding applicants for the pilot project. The Supreme Court, through its Division of State Court Administration had sought and obtained state funding for a two-year pilot project.

The task force, chaired by the Hon. Margaret Robb of the Indiana Court of Appeals, includes Judges

Lorenzo Arredondo of Lake County, Mary Harper of Porter County, Steve David of Boone County, Cynthia Ayres of Marion County and Stephen Sims of Allen County. Adjunct Professor Frances G. Hill of Bloomington, Indiana, serves as a consultant to the project. Lilia Judson and Nancy Gettinger also serve in advisory capacity.

Eight counties applied for the grants. The task force met three

times to formulate criteria for consideration, to review applications, to gather information from the applicant counties and to draft their recommendations to the Court.

On Monday, February 7, 2000, the Supreme Court announced the selection of Porter, Johnson, and Monroe Counties as the pilot family courts. Ms. Hill has already begun working with each county to establish time line goals, data collection, and generally to assist with project implementation. The Task Force will continue to meet for purposes of ongoing evaluation and to provide information to the Court regarding the demonstration projects.

Race and Gender Fairness Commission

Newly created commission addresses race and gender fairness issues

The Indiana Supreme Court has launched an effort to address comprehensively race and gender fairness in the justice system.

The Indiana Supreme Court Commission on Race and Gender Fairness met for the first time on December 9, 1999. The newly created Commission is chaired by Former Justice Myra C. Selby, the first female and the first African American to serve on the Indiana Supreme Court. She recently left the Indiana Supreme Court to re-enter private law practice. The Vice Chair of the Commission is Indiana Court of Appeals Judge Ezra Friedlander. The Commission staff support is provided by the Division of State Court Administration.

The Commission's mission is to study the status of race and gender fairness in Indiana's justice system and investigate ways to improve race and gender fairness in the courts, legal system, state and local government, as well as among legal service providers and public organizations. The Commission will recommend to the Supreme Court the adoption of policies and procedures promoting race and gender fairness.

"I am honored to be a part of this extraordinary effort," Ms. Selby said. "The importance of the work of this Commission cannot be underestimated, as it has the potential of impacting every citizen in this state."

The Commission consists of twenty-five members representative of the Indiana judiciary, the practicing bar, academia, state and local government, public organizations, law enforcement and corrections.

The Commission members appointed by the Indiana Supreme Court include: Lake Superior Court Judge Sheila Moss; Lake Circuit Court Judge Lorenzo Arredondo; Henry Circuit Court Judge John Kellam; Madison Superior Court Judge Dennis Carroll; Morgan Superior Court Judge Jane Spencer Craney; Marion Superior Court Judge Gerald Zore; Vanderburgh Superior Court Magistrate Jill Reifinger Marcum; Indiana Tax Court Judge Thomas G. Fisher; Ralph A. Cohen, attorney with Ice Miller Donadio & Ryan; Gerald Bepko, Chancellor of Indiana University Purdue University-Indianapolis; Tim M. Solso, President and Chief Operating Officer of Cummins Engine Co.; James C. Lintzenich, Vice Chairman and CEO of USA Group; Sam Odle, Vice President of Clarian Health Systems; Jennifer Dunfee, Barnes & Thornburg; Rosy Meza de Nuttle, of the Law Office of Rosy de Nuttle; James H. Voyles, Symmes Voyles Zahn Paul & Hogan; Judy Hawley Conley, Esq.; Professor Ann J. Gellis, IU School of Law; Ms. Rebecca Goss, Senior Vice President & General Counsel of Eli Lilly & Company; Fred Biesecker, Counsel to the Governor; Ms. Susan K. Carpenter, Public Defender of Indiana; and Superintendent Melvin J. Carraway, Indiana State Police.

For more information about the Indiana Supreme Court Commission on Race and Gender Fairness, please contact Lilia Judson or Kim Jackson in the Division of State Court Administration at 232-2542.

Legal Motions

Legal Motions features personnel changes in the Indiana Judiciary. If you have any news of retirements, resignations, new appointments, or people on the move, we would be happy to feature it.

Appointment of New Judges:

Indiana Court of Appeals, The Hon. Nancy Vaidik, effective February 7, 2000.

Bartholomew Superior Court, The Hon. Kathleen T. Coriden. She replaces the Hon. Norman D. Curry.

Brown Circuit Court, The Hon. Judy Stewart.

Clay Superior Court, The Hon. J. Blaine Akers. He replaces the Hon. John P. Stelle.

Marion Superior Court, effective September 13, 1999, the Hon. David Shaheed. He replaces Judge Clarence Bolden.

Marion Superior Court, effective January 1, 2000, the Hon. David Hensel. He replaces the Hon. Reuben Hill.

Appointment of New Commissioners:

Marion Superior Court, the Hon. Burnett Caudill. He fills the position left vacant when David Shaheed was appointed judge to replace the retiring Judge Clarence Bolden.

Appointment of New Magistrates:

St. Joseph County: Richard McCormick, 1/1/2000;

St. Joseph County: Brian Steinke 1/1/2000;

Sullivan County: Ann K. Smith, 7/1/99.

Grant Helps Parents Stay in Children's Lives

Marion Circuit and Superior—Title IV-D

An \$88,000 grant from the Indiana Family & Social Services Administration will enable Marion County Courts to hire an additional social worker to work with parents to iron out the logistics of child visitation and support.

With an eye on research that shows children who interact with both parents stay out of trouble and do better in school, Master Commissioner Barbara Collins sought the grant. A national study reported the following findings about fathers who have regular visitation with their children:

- ◆ seventy-five percent voluntarily pay child support compared to thirty-five percent of who do not have visitation;
- ◆ children without a father in their lives are more than twice as likely to live in poverty;
- ◆ sixty-three percent more likely to run away from home;
- ◆ twice as likely to drop out of high school; and
- ◆ five times more likely to commit suicide.

A similar grant last year enabled the court to hire a social worker, as well as purchase educational materials and a television and VCR, so parents could view informative videos.

The social workers will meet with families for three to six months to develop plans that satisfy court-ordered visitation.

"Some parents have tried everything to see their children," said Diane Elliott, ACSW, LCSW. "This is one more avenue."

The program is entirely voluntary and, if needed, the social workers will keep in contact with the family for up to three months to ensure that addi-

tional barriers to a successful visitation are addressed. The parents also receive information about communication, parenting skills and conflict resolution. Other services included are referrals to other agencies for education, job skills or counseling.

"A lot of it is emotional support," Elliott said. Elliott envisions support groups for the parents and the children. She also would be willing to accompany children meeting a parent for the first time. "I could be there to help break the ice. I might supervise a few introductory meetings to ensure that everyone feels comfortable."

Commissioner Collins said she wanted a social worker in the court because of the emotional turmoil families endure while trying to work out child support and visitation.

"Most people can't afford to go to court for visitation," Collins said. "The social workers also lessen the disputes over child support because a parent who is seeing their children regularly is more likely to keep up on child support payments. This program keeps a lot of cases out of the prosecutor's office."

Anyone going through Commissioner Collins' court can request the service. Collins sits as a commissioner in a court that hears Title IV-D cases, which are child support and paternity cases in which one party sought the services of the prosecutor's office to enforce support. Nearly 5,000 cases were processed through this division in 1999.

Information Management

Trial Rule 77

One of the more significant elements in standardizing judicial case management has been Trial Rule 77.

Trial Rule 77 creates uniform standards for case files, indexing, case tracking, and managing information and entries in each court's permanent records. It also creates a single protocol for communicating case information among trial courts and exchanging that information efficiently.

Many courts have been quite successful in achieving the objectives of Trial Rule 77. Others, especially those courts with older recordkeeping systems, must be more diligent in following TR 77. Most of the difficulties observed by the Division of State Court Administration relate to attorney-prepared entries. In the process of streamlining the entry process into the Record of Judgments and Orders, courts should follow these basic guidelines:

Motions. Motions should state clearly the actions being requested so the judge can approve or disapprove through his or her signature.

"Here Insert." Orders should never contain an "H.I." or "Here Insert" notation without further elaboration. If an order contains such a notation, the document it references such as a motion, a brief, or a legal memorandum must be included in the Order Book entry, and to avoid cluttering the RJO with extraneous paper, the inserted material should be included in the order.

Multiple Choice Forms. Forms submitted by attorneys which contain multiple actions or check

boxes create a potential problem because these forms may be ambiguous. For example, if a multiple choice form contains an item petitioning the court for a "dismissal/termination" of the action, the file may be incorrectly disposed, because the retention schedules specified in Administrative Rule 7 provide that dismissed cases are only retained for two years, while other cases may be retained from five to fifty-five years. If a case is incorrectly classified the file may be lost when it should have been retained.

Release of Judgment Motions. Some attorneys are filing release of judgment motions with the court seeking a judicial order. Small Claims Rule 11(D) specifies a procedure if the judgment creditor fails to release a judgment within thirty days of notice that the debt has been fully satisfied. Under this rule, the Clerk makes a CCS entry to the effect that the judgment has been satisfied and the judgment creditor has failed to release the judgment pursuant to court directive. The Clerk then makes an entry in the RJO. In the event that the judgment creditor releases the judgment, an entry should be made in the CCS only.

When Trial Rule 77 became effective in 1991, the Division of State Court Administration supplied local bar associations with suggestions on preparing motions and model orders for courts. A sample "minute entry" form is available and may be obtained by contacting John Newman at (317) 232-4703, or by visiting the Division's website at www.state.in.us/judiciary/admin.

Court Reporter Forms Due

Court Reporter annual Reporting Forms for calendar year 1999 are due in the office of State Court Administration by April 30, 2000.

New revised forms were mailed to all judges at the end of January. Please remember to include both, the county name and the court name, on the form.

Statistics Q & A

Q. My court has been doing a fair number of support petitions where the parents are not married, and the paternity has been established by affidavit. Under what category should these cases be counted?

A. Petitions for support of spouse or children with no accompanying paternity or dissolution filing is counted as an MI (Civil Miscellaneous). However, support action pursuant to a paternity affidavit is counted as a JP (Juvenile Paternity) if the court also establishes paternity. If there was no marriage between the parents, the court has to establish paternity as a preliminary matter (either through an affidavit or otherwise) before ordering support.

Q. We keep search warrant information in a special file, but do not assign case numbers. Should we?

A. Search warrants should be categorized as an MC (Miscellaneous Criminal) case. If charges have already been filed, or if the search warrant is part of an existing case, then the search warrant would not receive a separate case number but would be included in that case's materials.

Other frequently asked questions can be seen at www.state.in.us/judiciary/admin.

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Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

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Please Circulate to Co-workers

This newsletter reports on important administrative matters. For future reference, add it to your Trial Court Administrative Manual.